

MAN/00BW/OAF/2008/0038

Leasehold Valuation Tribunal – Decision

Applicants	- Mr and Mrs K E Gore
Respondent	- Freehold Portfolios G R Limited Represented by Stevensons, Solicitors, Dereham, Norfolk
Freeholder	- As above
Property	- 45, Bodmin Road, Tyldesley, Lancashire
Application date	- 20 th March 2009
Determination date	- 11 th January 2010
Tribunal	- J R Rimmer BA, LLM T Vincent FRICS

- 1 This Application is for a Leasehold Valuation Tribunal to determine the price payable for the freehold reversion in the house and premises at 45, Bodmin Road, Astley, Tyldesley, Lancashire in accordance with the provisions of the Leasehold Reform Act 1967 (“The Act”), as amended.
- 2 The history of the Application is in part recounted in the decision and directions of the Tribunal made early in 2009 that the original Notice was in all probability invalid and suggesting that the way forward for the Applicants was either to contest the validity of the Notice in County Court proceedings or to provide a notice in correct terms identifying both Mr and Mrs Gore as joint Applicants and the Respondent as Freehold properties GR Limited.
- 3 The Applicants served notice upon the agent of the landlord and freeholder on 20th March 2009 and the appropriate Notice in Reply was provided by the freeholder’s solicitor, dated 15th May 2010, admitting the Applicants’ claim.
- 4 The parties indicated that they were satisfied, as had previously been the case, with a determination of this matter on consideration of the papers alone, although on this occasion the Tribunal in due course arranged for an inspection of the property to take place. Unfortunately due to a misunderstanding on the part of the Chairman as to what correspondence had been received in the Tribunal office the matter was not progressed as speedily as might have been desirable
- 5 The terms of the lease relating to the ground rent of £60.00 per annum (with provision for prompt payment reducing that amount to £55.00 per annum), together with smaller sums for building consents and registration of assignment, are briefly referred to in the previous decision.

- 6 The property was inspected by the Tribunal on the morning of 8th January 2010 and found to be a four bedroomed detached house with gardens and having a shared driveway with two other properties. This arrangement appeared commonplace on the development of which 45, Bodmin Road formed a part. It is on a quiet suburban development within reasonable distance of the amenities of Tyldesley town centre and accordingly within reasonable commuter distance of larger conurbations in the North West.
- 7 No hearing was requested by either party and the Tribunal therefore re-convened later that day at its offices in Manchester to consider the representations previously made to it in writing. There were two matters for the Tribunal to consider: the purchase price to be paid for the freehold and the amount of the Respondent's costs for dealing with that matter both within this application and that previously made and abandoned by the Applicants. The Tribunal was disappointed to note the very late submission of documentation by the Solicitor for the Respondent relating to these issues given the notice given of when the determination would be made.
- 8 The evidence provided on behalf of the Respondent as to the value to be attached to the freehold was provided in a valuation dated 21st December 2009 by John Geraint Evans, a Chartered Surveyor with considerable experience in this field. The Tribunal gave this opinion its fullest consideration and as it has been seen by the Applicants it need not be reproduced in full within this decision but a number of points that it raises are worthy of further comment:
 - Mr Evans regards the ground rent as being the only relevant consideration within the lease to require valuation. The Tribunal agree.
 - The rent of £60 a year is a rent worth collecting and of some value to an investor
 - Mr Evans effects a valuation based on a return upon a capital sum invested in a manner that produces a capital return slightly more favourable than government gilts and produces a figure of £1047.42 after considering a number of differing rates that have, or might be used by a Tribunal.
 - The appropriate valuation date is taken by Mr Evans as being the date of the applicants notice given on 1st August 2008. The Tribunal respectfully disagrees with that view and considers that there is now a new application after the abandonment of the previous one. It was made on 20th March 2009.
- 9 So far as the law is concerned the determination of the price is to be in accordance with Section 9(1) Leasehold Reform Act 1967: that it is the amount at which at the relevant time the freehold reversion of the house and premises, if sold on the open market by a willing seller (with the tenant and members of his family who reside with him not buying or seeking to buy) might be expected to realise.
- 10 Certain statutory assumptions are required to be made by the Tribunal and there must also be consideration given to any other loss of income to the landlord arising from any potential charges he could legitimately make under the lease. The Tribunal takes the view that these are not of any significance and as mentioned above, have not played any part in Mr Evans' valuation.

- 11 In discharging its function to determine the price the Tribunal (following earlier decisions in *Yates v Bridgewater Estates* (1982) 261 EG 1001 and *Williams v Walsh* 91983) 268 EG 915) took into account the following:
 1. There was nothing in the Act to restrict its determination to any price suggested by the party/ies.
 2. That it would not be consistent with the definition of price in Section 9(1) of the Act or with the circumstances of the case to apply the algebraic formula prescribed by Parliament for the redemption of rentcharges under the Rentcharges Act 1977
 3. That the Tribunal was entitled to rely upon its general knowledge and experience, whatever the evidence, or lack of it, supplied by the parties.
 4. That the Act envisaged the sale of the freehold as one lot and not as part of a parcel of rents
 5. That the possibility of a bid by the sitting tenant which might push up the offer was specifically excluded by the Act.
 6. That the seller (although not the buyer/ had been statutorily described as willing so any policy of the landlord to restrict sales must be disregarded
 7. That the resultant loss of income to the landlord/seller was not comprehended by the Act for determining the price payable except insofar as this was reflected in the valuation process.
 8. That the hypothetical and potential buyers in the market would bear in mind their own conveyancing costs, any covenants to be contained in the resultant conveyance, the length of the lease and the ground rent payable.
 9. That the cost of collecting the rent, including the possible cost of agents and the cost of recovering arrears, on a yearly or part yearly basis, notwithstanding any practice of less frequent payment, must be borne in mind.
- 12 Additionally, it should be noted that the requirements for making a valid demand for rent have been increased under the provisions of the Commonhold and Leasehold Reform Act 2002, thus imposing a greater burden on the landlord in any event.
- 13 In the case of 45, Bodmin Road the lease has 979 years to run and the reversion is too remote to have any value. Expert evidence has been provided by Mr Evans for the freeholder that is not challenged by any evidence from the Applicants. He points out that there is no provision for increasing the rent at any point.
- 14 in relation to the valuation of the rent by Mr Evans it is the view of the Tribunal that it is high. Although the recent Lands Tribunal cases referred to in the valuation, *Nailrile and Cadogan* (LRA 114/2006) and *Nicholson and Bunbury and Wilks* (LRA 29/2006) provide a basis for assessing an appropriate rate of return on the investment of a capital sum there is a need to take into account the uncertainties of the regularity of future payment and the fact that the rent here is still relatively low with a not insignificant proportion of the recoverable amount likely to be lost in administration and collection. It is also a single rent not being sold as part of a larger parcel. Against this is the considerable incentive to the leaseholder to pay only £55.00 if the rent demand is met promptly. Indeed the Tribunal is of the view that given that incentive the likely rent received will be £55.00 rather than £60.00 in order to secure the discount. Consequently the costs of recovery are likely to be less given the incentive to pay on time. Exercising its judgement on that basis and taking into account the level of interest rates at the time of the application which is likely to be a short term

phenomenon, given historically higher levels, the Tribunal has decided to apply a rate of return of 6% or 16.67 years purchase of the rent of £55.00, giving a sum of £915.85, which if rounded to a likely bargained amount is £925.00. Such an amount also represents, in the opinion of the Tribunal a reasonable price for the acquisition of the conversion of the likelihood of receiving £55.00 a year, with all its attendant problems, in perpetuity into a lump sum payable now. **The value of the freehold interest in 45, Bodmin Road, Tyldesley is £925.00.**

- 15 The Respondent is entitled to recover his proper costs and disbursements in this matter relating to the sale of the freehold interest, both in relation to the first application and then the current one, (as opposed to the costs of the Tribunal proceedings which would be a separate matter) and its solicitors have produced a schedule of costs, similar to one provided for summary assessment in the County Court, showing the amount payable of £1,123.00 but thereafter indicating that they would accept the sum of £975.00, together with VAT at the appropriate rate, as a satisfactory amount. In support there was annexed the lands tribunal decision in Stoll Construction Limited and Colclough, Haywood and Berg (LRA184/2006) which supports the appropriate level of costs requested in terms of hourly rates for the appropriate fee earners.
- 16 The Tribunal was concerned to note the dichotomy between these amounts and amounts stated in previous correspondence. The original "Freehold Purchase Form" provided by the previous landlord, but using the same solicitors, in April 2008 refers to a contribution to legal and professional fees of £352.50, inclusive of VAT. The Tribunal assumes that the landlord was not contemplating a significant amount of work above this being provided to the tenant for free. Thereafter on 5th January 2009 Stevensons indicate fees are likely to be no more than £395.00, plus VAT. Again at the end of the previous proceedings an amount of £250.00 (including VAT at 15%) is referred to in the letter from Stevensons dated 20th March 2009 for costs, with additional disbursements. After making an allowance for increases in rates in the time since those letters it would appear to the Tribunal that an amount of £250.00 for the earlier abortive proceedings and £425.00 for the second application, a total of £675.00 with VAT added at the appropriate rate(s) is in line with previous indications given. The Applicant must remain aware of the additional disbursements which will still be payable.
- 17 By Section 17 Commonhold and Leasehold Reform Act 2002 a party to these proceedings before a Leasehold Valuation Tribunal (LVT) may appeal to the Upper Tribunal from the decision of the LVT.
- 18 In order to appeal a party must obtain permission to do so. An application for permission must first be made to the LVT. The application must be made within 21 days of the LVT decision being sent to that party. An application for the extension of that 21 day period must state the reasons and be made before the expiration of the 21 day period (Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, Regulations 20 and 24).
- 19 If permission to appeal is refused by the LVT an application for permission may be made to the Upper Tribunal within 28 days of that refusal (The Lands Tribunal Rules 1966 as amended and Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Functions) Order 2009).

J R Rimmer

A handwritten signature in black ink, appearing to read 'JR Rimmer', with a stylized flourish at the end.

Chairman, Leasehold Valuation Tribunal.